



[BILLING CODE 6760-01-P]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Criminal Restitution Orders

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its procedures for processing criminal restitution orders to: (1) require an enforcement letter from the Department of Justice stating that restitution has been ordered under the Mandatory Victims Restitution Act; and (2) provide that the Agency will treat a judgment ordering restitution under the Mandatory Victims Restitution Act as a final judgment. The Agency also proposes to make two technical corrections.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments using one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>

at Docket ID number FRTIB-2015-0001. Follow the instructions for submitting comments.

- Mail: Office of General Counsel, Attn: James Petrick, Federal Retirement Thrift Investment Board, 77 K Street, N.E., Suite 1000, Washington, D.C. 20002.

- Hand Delivery/Courier: The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.

- Facsimile: Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942-1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under

section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The Agency's governing statute includes an anti-alienation provision that generally protects TSP funds from execution, levy, attachment, garnishment, or other legal process. 5 U.S.C. 8437(c)(2). However, there are exceptions for certain court orders such as criminal restitution orders under the Mandatory Victims Restitution Act (MVRA) of 1996. The Department of Justice (DOJ) may request a payment from a participant's TSP account to enforce a judgment that orders restitution under the MVRA.

On September 10, 2014, the Agency published regulations explaining the Agency's procedures for processing payments for the enforcement of criminal restitution orders. 79 FR 53603 (September 10, 2014).

Requirement to Provide an Enforcement Letter

Various statutes grant courts the authority to order, or compel them to order, convicted offenders to pay restitution to victims as part of their sentences. Only orders for restitution under 18 U.S.C. 3663A can be enforced against a TSP account.

Judgments ordering restitution often do not reference the statutory authority or statutory mandate under which the court ordered restitution. This leaves the Agency to

determine the authority or mandate under which the court ordered restitution. The Agency believes the DOJ is better positioned to determine the authority or mandate under which the court ordered restitution. Therefore, the Agency proposes to amend 5 CFR part 1653 to require an enforcement letter from the DOJ stating that the court ordered restitution under 18 U.S.C. 3663A. The Agency will rely on the DOJ's assertion that the court ordered restitution under 18 U.S.C. 3663A.

Treatment of a Judgment Ordering Restitution under 18

U.S.C. 3663A as a Final Judgment

The Agency has received requests from several participants to stay payment from their TSP accounts pending the outcome of an appeal of a judgment ordering restitution under 18 U.S.C. 3663A or the underlying conviction. The Agency's policy is to deny such requests and treat the judgment as a final judgment. This policy is consistent with 18 U.S.C. 3664(o), which says that a sentence that imposes an order of restitution is a final judgment notwithstanding the fact that it may be corrected, amended, or appealed. The Agency proposes to amend 5 CFR part 1653 to codify this policy.

Technical Corrections

Paragraph (c)(5) of § 1653.33 provides that the TSP

will not honor a criminal restitution order that requires a series of payments. The Agency proposes to amend paragraph (c) (5) to provide that the TSP will not honor a criminal restitution order that requires "the TSP to make" a series of payments. The Agency also proposes to replace certain references to a "restitution order" in 5 CFR part 1653, subpart D with the defined term "criminal restitution order" to avoid any ambiguity with respect to whether the regulations refer to the underlying judgment itself or the documents necessary to enforce the judgment against a TSP account. For consistency, the Agency also proposes to replace certain references to a "levy" with the defined term "tax levy."

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these proposed regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This proposed regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects

5 CFR Part 1653

Claims, Government employees, Pensions, Retirement, Taxes.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1653-COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

1. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5), and 8474(c)(1).

2. Amend § 1653.31(b), by revising the definition for "criminal restitution order" and adding a definition for "enforcement letter" in alphabetical order to read as follows:

§ 1653.31 Definitions.

* * * * *

(b) * * *

Criminal restitution order means a complete copy of a judgment in a criminal case issued by a federal court ordering restitution for a crime under 18 U.S.C. 3663A.

Enforcement letter means a letter received from the Department of Justice requesting a payment from a participant's TSP account to enforce a criminal restitution order.

* * * * *

3. Amend § 1653.33 by:

a. Revising paragraph (b)(2) and adding paragraph (b)(3),

b. Replacing the words "restitution order" wherever they appear not preceded by the word "criminal" with the words "criminal restitution order" in paragraphs (c)(1) and (2); and

c. Revising paragraphs (c)(3), (c)(5), and (c)(6).

The revisions read as follows:

§ 1653.33 Qualifying criminal restitution order.

* * * * *

(b) * * *

(2) The criminal restitution order must require the participant to pay a stated dollar amount as restitution.

(3) The criminal restitution order must be accompanied by an enforcement letter that states the restitution is ordered under 18 U.S.C. 3663A. The enforcement letter must expressly refer to the "Thrift Savings Plan" or describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits.

(c) * * *

(3) A criminal restitution order accompanied by an enforcement letter that requires the TSP to make a payment in the future;

* * * * *

(5) A criminal restitution order accompanied by an enforcement letter that requires TSP to make a series of payments;

(6) A criminal restitution order accompanied by an enforcement letter that designates the specific TSP Fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

4. Amend § 1653.34 by revising the last sentence of paragraph (b) introductory text to read as follows:

§ 1653.34 Processing Federal tax levies and criminal restitution orders.

* * * * *

(b) * * * To be complete, a tax levy or criminal restitution order must meet all the requirements of § 1653.32 or § 1653.33; it must also provide (or be accompanied by a document or enforcement letter that provides):

* * * * *

5. Amend § 1653.35, by revising the first sentence of the introductory text and revising paragraph (a) to read as follows:

§ 1653.35 Calculating entitlement.

A tax levy or criminal restitution order can only require the payment of a stated dollar amount from the TSP. The payee's entitlement will be the lesser of:

(a) The dollar amount stated in the tax levy or enforcement letter; or

* * * * *

6. Amend § 1653.36 by:

a. Replacing the word "levy" wherever it appears not preceded by the word "tax" with the words "tax levy" in paragraph (a);

b. Replacing the words "restitution order" wherever they appear not preceded by the word "criminal" with the words "criminal restitution order" and by replacing the word "levy" wherever it appears not preceded by the word "tax" with the words "tax levy" in paragraph (c);

c. Revising paragraph (d) introductory text;

d. Replacing the word "levy" wherever it appears not preceded by the word "tax" with the words "tax levy" in paragraph (g); and

e. Adding paragraph (h).

The revisions and additions read as follows:

§ 1653.36 Payment.

* * * * *

(d) If a participant has funds in more than one type of account, payment will be made from each account in the following order, until the amount required by the tax levy or stated in the enforcement letter is reached:

* * * * *

(h) The TSP will not hold a payment pending appeal of a criminal restitution order or the underlying conviction. The TSP will treat the criminal restitution order as a final judgment pursuant to 18 U.S.C. 3664(o) and process payment as provided by this subpart.

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